

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RITA JETTE,

Plaintiff,

v.

GEORGE MCQUEEN, et al.,

Defendants.

No. C 05-2226 PJH

**ORDER GRANTING MOTION TO
AMEND AND MOTION TO FILE
THIRD PARTY COMPLAINT AND
DENYING MOTION TO DISMISS**

Plaintiff's motion for leave to file a first amended complaint, as well as defendant's motion for leave to file a third party complaint and motion to dismiss plaintiff's complaint for failure to join an indispensable party, came on for hearing before this court on March 1, 2006. Plaintiff Rita Jette appeared through her counsel, Seth L. Goldstein and Maureen M. Bryan. Neither defendant George McQueen nor Michael Friel appeared at the hearing. Having read the parties' papers and carefully considered the arguments and the relevant legal authority, and good cause appearing, the court hereby GRANTS plaintiff's motion for leave to file a first amended complaint, GRANTS defendant's motion for leave to file a third party complaint, and DENIES defendant's motion to dismiss for failure to join an indispensable party, for the reasons stated at the hearing and summarized as follows.

1. Having shown good cause for the filing of a first amended complaint, plaintiff's motion for leave to file a first amended complaint is GRANTED, and plaintiff is instructed to file a first amended complaint no later than March 8, 2006.
2. Under the liberal pleading principles espoused by the Ninth Circuit, defendant is GRANTED leave to file its third party complaint. Discovery will proceed with respect to defendant's third party complaint concurrently with the

underlying case, although the court will consider at a later case management conference whether trial on the third party complaint will be bifurcated from the underlying complaint.

3. Although plaintiff's first amended complaint has not yet been filed, plaintiff's counsel has assured the court that such complaint will (as argued in plaintiff's opposition) proceed only on individual claims held by plaintiff against defendants in connection with defendant's alleged malpractice and breach of relevant duties. Accordingly, defendant's motion to dismiss plaintiff's complaint for failure to join an indispensable party is DENIED.

With respect to defendant's request that the court take judicial notice of several court documents and/or pleadings filed in the state court probate action, the court GRANTS the request, since all proper subjects for judicial notice pursuant to Federal Rule of Evidence 201. Finally, with respect to plaintiff's administrative motion requesting an extension of time in which to file two supporting declarations in opposition to defendant's motion to dismiss (which was not filed until February 8, 2006), the court GRANTS the motion retroactively with respect to the Jette declaration in opposition to defendant's motion to dismiss, and DENIES the motion with respect to the proposed Lake County Counsel declaration.

IT IS SO ORDERED.

Dated: March 3, 2006



PHYLLIS J. HAMILTON
United States District Judge